



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/166882

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Family Care, a Medicaid (MA) – related benefit, a hearing was held on September 16, 2015, at Milwaukee, Wisconsin. A hearing set for August 4, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the Department or its agent failed to make a determination of the petitioner's Family Care/IRIS eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], IM Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 10, 2015, the petitioner filed an Elderly/Blind/Disabled (EBD) Medicaid application with the Department. The application contained a request for backdating back to February 1, 2015. On April 14, 2015, the Department mailed an eligibility notice to the petitioner. The notice advised that, although the petitioner was “not [currently] enrolled in a health plan because you ... have too much income,” the petitioner could become certified for Medicaid if he met a \$40,780.62 deductible. The notice says nothing about MA-related long term care programs, such as Family Care or IRIS. *See*, Exhibit 4.
3. The petitioner’s representative assumed that he was applying for Family Care or IRIS when he filed the March 10 EBD MA application.
4. The first step for getting on the IRIS program is to file an EBD MA application. After a positive MA eligibility decision is made, a person seeking Family Care/IRIS in Milwaukee County is supposed to contact the Milwaukee County Aging and Disability Resource Center (ADRC) and request such assistance. The ADRC is then supposed to perform a telephonic screening, and an in-home functional eligibility screening. If the applicant is eligible, the ADRC is supposed to send an enrollment packet back to the section of the Department (Income Maintenance) where Worker ██████ is employed. Income Maintenance would then take further bureaucratic steps to enroll the applicant in Family Care/IRIS. Here, the ADRC never sent an enrollment packet back to the Income Maintenance section for further processing. As a result, as of the date of hearing, the petitioner has not been enrolled in Family Care or IRIS.
5. The petitioner has Alzheimer’s, and therefore has a guardian of his person – ██████. In February 2015, ██████ contacted the ADRC and the Veteran’s Administration to request functional evaluations of the petitioner. Functional evaluations are done to determine if the applicant has care needs that are at an institutional level; if a person does not have care needs of that severity, he will be denied IRIS services. The evaluations were performed in February, and VA benefits opened for the petitioner.
6. The petitioner received no communication from the ADRC as to the result of his functional evaluation, or regarding any aspect of his eligibility for Family Care or IRIS.
7. The Department’s CARES database shows that no eligibility notices were mailed to the petitioner, other than the April 14, 2015, MA denial notice, from the date of application through the date of this hearing.
8. At the close of hearing, the Judge recommended to the petitioner’s representative that he promptly make a request to the Milwaukee County ADRC for further processing of his request for IRIS eligibility and a new functional evaluation (if needed).

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department’s agent must assess the participant’s needs and preferences (including health status/functional ability) as a condition of IRIS participation. *Id.*, §441.466. The Department’s agent must also develop a service plan based on the assessed needs. Further, “all of the State’s applicable policies and procedures associated with service plan development must be carried out ...” *Id.* §441.468. All Medical Assistance-based care plans for personal care services are required, by state code, to be developed by a registered nurse, and to be ordered by a physician. Wis. Admin. Code §DHS 107.112(3)(b). In this instance, that did not occur through the date of hearing.

The Wisconsin waiver document declares:

...The FSA [fiscal agent], under its provider agreement with the Department, pays the participant's service provider, based on the authorized ISP [care/service plan] budget and then bills the Department for reimbursement for the services or goods that have been paid to providers. ... The FSA, under its provider agreement with the Department, pays the participant's service provider, based on the authorized ISP budget and then bills the Department for reimbursement for the services or goods that have been paid to providers.

Section 1915(c) waiver document, at Appendix I-2, available online at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. Because there was no authorized service plan in place through the date of this hearing, I cannot order the IRIS program to provide services or payment for services provided through the date of hearing. The same would be true for the IRIS program's cousin, Family Care. *See*, Wis. Admin. Code §§ DHS 10.36(2)(a), 10.41(1).

The petitioner legitimately complains that it took longer than is desirable for an IRIS service plan to be developed. However, I must follow the regulations above. The petitioner's complaint is essentially an equitable one; although a circuit court can invoke equitable powers, an administrative law judge lacks the authority to do so.

I will, however, direct the Milwaukee County Family Care agency to (1) perform a functional screening and (2) complete any relevant Family Care/IRIS application processing for the petitioner within 10 days of this Decision, *unless* that agency has done so prior to the date of this Decision.

CONCLUSIONS OF LAW

The IRIS and Family Care programs cannot pay for personal care services furnished prior to creation of an authorized service plan for the petitioner.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Milwaukee County Department of Family Care with directions to (1) perform a functional screening and (2) complete any other relevant Family Care/IRIS application processing for the petitioner within 10 days of this Decision, *unless* that agency has done so prior to the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

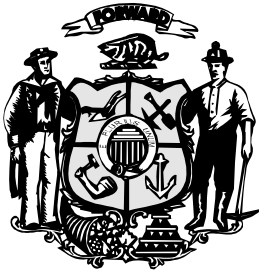
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of November, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 10, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability
Attorney [REDACTED]